

Association of
Title IX Administrators

Live Hearings for Higher Education

Training and Certification Course

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WELCOME!

- Please log in to your ATIXA Event Lobby each day to access the course slides, supplemental materials, and to log your attendance.
- The ATIXA Event Lobby can be accessed by the QR code or visiting **www.atixa.org/atixa-event-lobby** in your internet browser.
- Links for any applicable course evaluations and learning assessments are also provided in the ATIXA Event Lobby. You will be asked to enter your registration email to access the Event Lobby.
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Any advice or opinion provided during this training, either privately or to the entire group, is never to be construed as legal advice or an assurance of compliance. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law in your jurisdiction, any applicable state or local laws, and evolving federal guidance.

Course Introduction



The primary focus of this course is to equip Title IX practitioners to prepare and run live hearings as required under Title IX regulations.



Title IX Coordinators and Decision-makers must understand live hearing logistics, questioning best practices, relevance determinations, and due process protections.



Our goal is to help Title IX Coordinators and Decision-makers approach live hearings with confidence.

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Content Advisory

The content and discussion in this course will necessarily engage with sex- and gender-based harassment, discrimination, and violence and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language.

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Title IX Grievance Process Review

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Title IX and Equity

- Title IX is a gender equity law
- Equity refers to the understanding that not all individuals have access to the same resources and opportunities
  - Equity focuses on providing support and resources to reduce disparities in access to the education program
  - Title IX seeks to remedy the inequities sexual harassment and sex discrimination create
- Live hearings must be equitable for all parties within a complaint and across complaints

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Essential Compliance Elements

The requirement to Stop, Prevent, and Remedy guides the institution's equity and compliance work

1

STOP discriminatory conduct

2

PREVENT recurrence, on both individual and institutional levels

3

REMEDY the effects of discrimination, for both the individual and the community

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Title IX Grievance Process Overview

1 — INCIDENT

- Complaint/ Notice to TIXC

2 — INITIAL ASSESSMENT

- Jurisdiction
- Dismissal
- Supportive Measures
- Emergency Removal
- Referral to Another Process
- Informal/Formal Resolution

3 — FORMAL INVESTIGATION

- NOIA
- Interviews
- Evidence Collection
- Draft Report
- Share Draft & Evidence
- Review/ Comment
- Final Report

4 — HEARING

- Questioning
- Credibility Assessment
- Determination & Rationale
- Sanctions
- Remedies

5 — APPEAL

- Appeal Grounds
- Determination & Rationale

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Title IX Higher Education Decision-Maker Course Topics

- Role and Responsibilities
- Title IX Scope
- Conflicts of Interest and Bias
- Due Process
- Understanding and Applying Policy
- Evidence
- Credibility
- Sanctioning
- Written Determinations
- Appeals
- Recordkeeping

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Title IX Regulatory Requirements

- Prompt resolution
- Decision-makers (DM) must operate without bias and/or conflicts of interest
- Title IX Coordinator (TIXC) and/or Investigator may not serve as DM
- DM must be trained on any hearing technology
- Hearings must be recorded
- Parties must be permitted to have access to the recording or a transcript
- Rationale for all decisions/determinations prior to, during, or after a hearing
  - Relevance determinations, findings, final determinations, sanctions

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Title IX Regulatory Requirements

Parties have opportunity to:

- Participate fully in the grievance process
- Present inculpatory and exculpatory relevant evidence and witnesses, including expert witnesses
- Conduct cross-examination through an Advisor
- Review all relevant and directly related evidence, including all evidence the DM relies upon in reaching a final determination
- Appeal the final determination

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What is a Live Hearing?

- DM could be a single person or a panel (typically three)
  - Institutional community member(s) (typically faculty or staff) or external contractor(s)
  - DM and Advisors can ask relevant questions
- Parties and witnesses may be in person or virtual
  - Separate rooms
- DMs deliberate privately to reach a final determination
  - DMs may or may not be involved in determining sanctions and remedies

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Single Decision-Maker vs. Panel

Single Decision-Maker

- Simpler scheduling
- Easier to staff and train
- Streamlined deliberation
- Streamlined drafting process
- Only one perspective
- Bias concerns
- Can overtax a single person

Panel

- Additional scheduling considerations
- Costs more to staff and train
- Deliberation and drafting may take longer
- Majority vote or consensus
- Diversity of perspective
- Reduce bias concerns

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Hearing Participants and Logistics

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Who Will be Present at the Hearing?

Parties

Witnesses

Advisors

Investigator(s)

Decision-maker(s)

Hearing Facilitator

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General Logistics

- Party and witness attendance
- Advisor attendance
- Location and physical space
  - Accessibility
  - Parking
  - Privacy
  - Restrooms
  - Waiting areas
  - Furniture



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General Logistics

- Recording
- Hearing technology
- Administrative, tech, or A/V support
- Evidence for parties, Advisors, and witnesses
- Breaks



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Hearing Facilitator

- Not required by the regulations, but a best practice
  - May be TIXC or a different person
- Facilitate a smooth hearing and help problem-solve
  - Maintain hearing schedule and order of events
  - Communicate with parties, Advisors, and witnesses during the hearing
    - Manage in-person or virtual waiting rooms
  - Ensure recording; manage devices and files
  - Provide access to evidence during the hearing
  - Coordinate additional support (food, facilities, technology, materials)

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Scheduling Considerations

- Reasonable number of hours in a single day
- Multi-day hearings
- Availability of:
  - Parties, witnesses, and Advisors
  - Decision-maker(s)
  - Interpreter or other accommodation
  - Physical space
- Breaks
- Finals/Graduation
- Employees on soon-to-be-expiring contracts



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Virtual Hearing Considerations

- Any party may request a virtual hearing
- Virtual hearings provide helpful flexibility
  - No travel required
  - No large physical space needed
- Choose software or platform to meet hearing needs
  - Zoom is a common option
  - Participants must be able to see and hear each other
- Prepare for Wi-Fi issues or other tech problems
- Individuals may need to participate virtually from campus

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Advisors

- Required under Title IX regulations for purposes of cross-examination at a live hearing
- No training mandate
- Can be an attorney, but attorney not required
- May regulate Advisor participation, so long as applied equally to all parties
- Advisors conduct cross-examination in the live hearing



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Advisor Roles in the Grievance Process

The Advisor may support their advisee with:

- All phases of the resolution process
- Strategic issues, such as whether to:
  - File a formal complaint
  - Participate in informal resolution
- Accessing supportive measures, community resources, and advocacy services
- Participating in the investigation, including review and comment on the investigation report
- Preparing for the hearing
- Conducting any questioning/cross-examination at the hearing
- Appeal procedures

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Advisors

The Title IX regulations imagine two types of Advisors:

Party-Selected Advisor

- Title IX regulations specify that a party may select an "Advisor of choice"
- May accompany the party throughout resolution process
- May be present for every meeting, interview, and hearing
- Institution may not limit the choice

Institution-Appointed Advisor

- Required to appoint only for the hearing
- If appointed early enough, may accompany the party throughout resolution process and be present for every meeting, interview, and hearing
- Appointed if party has not chosen an Advisor by the hearing, if cross-examination to occur

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Chairperson/Single Decision-Maker Role and Responsibilities

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Responsibilities in the Process

	Pre-Hearing	Hearing	Deliberation
Panelists	• Review investigation report and evidence file • Ensure no conflict of interest • Prepare questions	• Listen actively • Ask/pose questions • Assess credibility	• Analyze relevant evidence • Balance credibility and reliability • Determine outcome, sanctions, remedies
Chair/DM	**Panelists' tasks plus:** • Pre-hearing meeting • Technology training • Witness list • Evidence review and redaction (if applicable)	**Panelists' tasks plus:** • Follow script/procedures • Manage questioning, including relevance determinations • Consult with counsel/TIXC	**Panelists' tasks plus:** • Lead discussion • Take notes • Draft rationale/outcome letter

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Chair/Single Decision-Maker Responsibilities

- Follow the hearing procedures
- Guide other DMs on procedures
  - Navigate issues that are not specified in policy
- Enforce decorum expectations
- Manage Advisors
- Determine question relevance
  - Parties/witnesses pause before responding to a question
  - Chair makes relevance determination, states rationale
- Facilitate the deliberation discussion
- Lead rationale writing/outcome letter process

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Other Chairperson Considerations

- Clarify with TIXC prior to hearing whether DM:
  - Determines relevance for questions from the panel or just from the Advisors
  - Permits Advisors to “argue” whether a question should be deemed relevant or irrelevant
  - Ask questions of parties and witnesses before or after Advisor-led questioning
- Address evidence that DMs should not rely upon

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Pre-Hearing Meetings: Purpose and Format

- ATIXA recommends, but not required by Title IX regulations
  - Check whether institutional policy describes pre-hearing meetings
- May hold several separate meetings with each party and their Advisor
  - May hold combined meetings
  - Summarize rulings in a memo to the parties and Advisors, as needed
- May be virtual or in-person
- Address questions, concerns, expectations prior to hearing
- May flow more efficiently if Advisors are able to speak freely with the Chair/DM

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Pre-Hearing Topics

- Answer questions about procedures
- Discuss interpretation, translation, or accommodation needs
- Address scheduling questions or concerns
- Review flow and logistics for before, during, and after the hearing
- Reinforce expectations and decorum rules
- Explain cross-examination procedures



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Common Pre-Hearing Meeting Discussions

Pre-hearing meetings can provide an opportunity to:

- Discern whether parties intend to ask questions of any or all witnesses, or whether a party intends not to testify at the hearing
- Invite parties to submit questions in advance, but this is not required
- Discern any conflicts of interest/vet recusal requests
- Consider any questions regarding relevance of evidence or proposed questions and may make pre-hearing rulings
- Whether to redact directly related or not relevant information
- Address expectations or issues regarding new evidence consistent with institutional policy

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Managing Advisors Generally

- Advisors approach the role differently, depending on training and background
  - All Advisors need management, not just attorney Advisors
- Be firm, but flexible
- De-escalate conflicts
- Advisor may be removed if disruptive, after warning
- Decorum expectations
  - Generally, parties should speak for themselves
  - Hearings are not court processes

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Hearing Preparation

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Hearing Preparation

Prior to the hearing, DMs must review:

- Notice of Investigation and Allegations (NOIA)
- Policies alleged to have been violated
  - Policy elements
- Applicable procedures
- Investigation report and evidence file
  - Review more than once, as needed
  - Note facts in dispute and not in dispute
  - DM annotations or notes may be subject to FERPA or discoverable

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Hearing Preparation

- Prepare questions in advance of hearing
  - Helps DMs structure their questions in a logical, organized way
  - Ensures no significant disputed fact or inconsistency is missed
  - Helps DMs understand and analyze the evidence in the report
- Meet as a panel (if applicable)
  - Discuss investigation report and evidence file
  - Review questions for parties and witnesses
  - Determine questioning order

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Hearing Script and Flow

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Hearing Script and Flow

Not Recorded

1

TECHNOLOGY REVIEW
- Video requirement
- Party and Advisor communication

2

LOGISTICS
- Breakout/Waiting rooms
- Restrooms
- Breaks

3

INTRODUCTIONS
- Participant introductions
- Hearing purpose

4

RECORDING & CONFIDENTIALITY
- Confidentiality and privacy expectations
- Recording and post-hearing access

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Hearing Script and Flow

5

HEARING PROCEDURES

- Decorum expectations
- Roles
- Order of testimony

6

ALLEGATIONS

- Formal charges
- Confirmation of acceptance/non-acceptance of responsibility

7

INVESTIGATOR STATEMENT

- Complaint introduction
- Questions from DMs then Advisors

8

PARTY STATEMENTS

- Complainant then Respondent
- Statement then DM and Advisor Cross/Direct

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Hearing Script and Flow

9

WITNESS QUESTIONING

- Expectation of truthfulness/Honor Code
- Questions from DMs then Advisors

10

ADDITIONAL QUESTIONS

- DMs
- Advisors

11

CLOSING STATEMENTS

- Complainant then Respondent
- Hearing closure

Not Recorded

12

DELIBERATION

- Deliberation guidelines and process
- Determine rationale and evidence relied upon

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Recommended Best Practices

- Keep microphones muted
- Use a different platform for parties to communicate with Advisors
- Prevent distractions in video/audio backgrounds
- Assign breakout rooms
- Facilitate DM, parties, Advisors, and other personnel introductions
- Establish confidentiality expectations
- Exclude impact/mitigation statements during hearing, accept after responsibility determination

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Hearing Decorum

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Setting the Tone

- Hearing is a significant event in the parties' lives at that time
- Formal, administrative process
- Decision-making is a neutral role
- Clear, direct communication
- Active listening
- De-escalate as needed
- Maintain control



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DM Decorum Practices and Pitfalls

DO

- Set the tone with your own behavior
- Behave professionally while around any participants
- Maintain composure
- Evaluate the relevant evidence
- Minimize distractions

DON'T

- Escalate tensions or conflict
- Act like a judge
- Treat the hearing like a courtroom
- Use legal terms
- Interrogate parties or witnesses
- Make sarcastic comments or jokes
- Set out to prove or disprove allegations

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Day of the Hearing

- Follow attire expectations
- Arrive early and prepared
  - Investigation report, evidence file, and preparation notes
  - Notetaking materials
  - Snacks and beverages
  - Comfort items
- Do not schedule anything else that day
- Turn off or silence technology

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Decorum Rules

- Institutions may have reasonable decorum expectations
- Governs behavior for parties, witnesses, Advisors, and DMs
- Addresses disruptive, disrespectful, or other prohibited behaviors
- Promotes consistency across hearings



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Party Decorum Expectations

- No party should address the other directly
- During cross-examination, only a party's Advisor or the DM may speak to or address the other party or witness
- No participants may interrupt the proceedings with applause, heckling, outbursts, or other disruptive behavior
- Any threat of violence will be addressed immediately
- No participants may act abusively or disrespectfully during the hearing

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Advisor Decorum Expectations

- May not act abusively or disrespectfully during the hearing
- May not yell, scream, badger, or physically invade the space of a party, witness, or DM
- May not approach the other party or a witness without obtaining permission from a DM
- Should remain seated

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Advisor Decorum Expectations

- May not make irrelevant personal attacks on a party or witness
- May not ask repetitive questions or make accusations in their questions
- May not intimidate a party, witness, or DM
- Any relevant question that violates the decorum rules will be deemed not relevant by the hearing body because it is abusive
    - The question may be reframed in a way that adheres to decorum expectations

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Warning and Removal

- DMs have sole discretion to determine if decorum expectations have been violated
- DMs should provide one warning prior to removal, unless decorum violation is egregious
- If an Advisor is removed, the party may select a different Advisor, or the institution will provide one
  - Reasonable delays make be appropriate to find a new Advisor
  - A party may not serve as their own Advisor
- Any removal will be documented

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Interpersonal Skills

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Building Rapport

- Be hospitable, but small talk may come across as inappropriate
- Be clear about your role and transparent about the process
  - A hearing script may be helpful
- Maintain a calm demeanor
- Listen actively
- Monitor your body language
- Treat all participants with empathy and respect

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Active Listening



PAY ATTENTION
- Focus on responses
- Avoid interrupting



SHOW YOU'RE LISTENING
- Communicate nonverbally
- Avoid distractions



PROVIDE FEEDBACK
- Reflective tone
- Seek clarification

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Questions Skills and Considerations

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Asking Questions

- DMs may ask parties and witnesses questions
- Appropriate questions have clear intent, are relevant to the allegations or credibility, and are thoughtfully phrased
- Goals:
  - Learn the facts
  - Establish a timeline
  - Understand each party and witness's perception
  - Eliminate vagueness and gaps



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Questioning Strategies & Pitfalls

DO

- Ask short, precise questions
- Use open-ended questions
- Repeat and clarify the language the parties and witnesses use
- Write questions from policy definitions
- Listen carefully, ask related follow-ups
- Look for cued or rehearsed answers

DON'T

- Ask accusatory or argumentative questions
- Use critical or sarcastic tone
- Develop compound or confusing questions
- Offer evaluative responses
- Sanitize participants' language
- Rely solely on closed-ended questions
- Chase "gotcha" moments

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Questioning Tips

- Outline questions in advance, but remain flexible
  - Allows for comprehensive and thorough approach
  - If working with other DMs, consult on questions to reduce potential bias
- Prior to asking a question, consider:
  - Is the answer already available in the investigation report?
  - What are the relevant issues?
  - What do I need to know?
  - Why do I need to know it?
  - What is the best way to ask this question?

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Asking Difficult Questions

- DMs will need to ask difficult questions about sensitive topics
- Acknowledge if a topic may be hard to discuss
  - DO NOT avoid asking questions because the topic is difficult to discuss
- Provide opportunities to take breaks
- DMs can show empathy **without** sacrificing their impartiality
  - Offer that empathetic response equitably to all parties and witnesses during the hearing, so that there is no appearance of favoritism

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Trauma-Informed Questioning

ATIXA Position Statement: Application of trauma-informed practices in our field has gotten ahead of the actual science

- **ATIXA Recommends:** Incorporate trauma-informed **questioning** practices without allowing trauma to influence the evaluation of credible, relevant evidence
  - DM must only assess the available relevant evidence
  - DM must avoid substituting trauma indicators for evidence
  - Trauma is neutral; it neither enhances nor detracts from proof
  - Be attuned to potential biased thinking
- Assume that any party or witness could have trauma; therefore, treat everyone with sensitivity

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Credibility in the Hearing

- A key purpose of a hearing is to afford an opportunity to assess credibility
- DMs and/or Advisors can explore credibility
- Fundamental to due process
- Distinguish performance or presentation skills from believability

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Activity: Question Asking

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Activity: Question Asking

- Using the **Sample NOIA** and **Sample Investigation Report** in the course lobby:
  - Work independently or in small groups
  - Review the relevant materials
  - Draft five questions a DM should ask the Complainant
  - Provide a rationale for asking each question
- This activity illustrates the process of developing questions prior to the hearing based on an independent review of the report

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Managing Questions

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Managing Questioning

- Advisors may ask relevant questions of parties and witnesses
  - Direct questioning
    - E.g., Respondent's Advisor questioning Respondent
    - Valuable way to elicit important information
    - Check institutional policy to determine whether direct questioning permitted
  - Cross-examination
    - E.g., Respondent's Advisor questioning Complainant
- All questions must elicit relevant information
- DMs and Advisors should ask all questions even if a party/witness refuses to answer

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Cross-Examination Mechanics

- Advisor asks question; party/witness pauses before answering
- DM determines relevance
  - Permit relevant questions and follow-ups, including those challenging credibility
  - Disallow questions that are not relevant and state your rationale
- Unduly repetitive questions are not relevant
  - Reject questions already answered in the hearing unless expected to lead to additional relevant evidence
  - Should not repeat questions already asked by DM
  - May ask questions answered in investigation report

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Cross-Examination Challenges

- A party or witness may not attend the live hearing, despite participating in the investigation
- A party or witness may choose to not answer one or more questions
- DM(s) may not draw an inference regarding responsibility based **solely** on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions
  - Possible missed opportunity for corroborative or consistent testimony
  - Refusal to answer questions may impact credibility or reliability, but draw no inferences about the non-participation

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Cross-Examination

- Parties may opt for their Advisor not to ask any questions
- Advisors may not refuse to ask relevant questions their advisee wishes for them to ask
  - Otherwise, the institution must appoint an Advisor who will ask those questions

Regulations Imagine:

Advisors will not do more than repeat or rephrase questions framed by the party

In Reality:

Advisors are much more active and engaged

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Activity: Relevance Determinations

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Relevance Determinations Part I

- Using the **Questions for Respondent**, **Complainant's Opening Statement**, and **Respondent's Opening Statement** documents in the course lobby:
  - Work independently or in small groups
  - Review material as needed
  - Make relevance determinations for each question and explain your rationale

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Relevance Determinations Part II

- Course faculty will act as Respondent's Advisor posing questions to the Complainant
  - Participants will act as Chair and make relevance determinations and explain rationale
- This activity demonstrates the cross-examination mechanics

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Deliberation

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Deliberation

- Post-hearing discussion of relevant evidence
  - Analyze relevant evidence
  - Determine credibility
  - Assign evidentiary weight
  - Evaluate reliable, relevant evidence considering standard of evidence
- If using a panel, check policy to see if consensus or majority is required
- Assign sanctions, as appropriate

Finding
Whether the conduct occurred, by the standard of evidence

Final Determination
Whether the conduct that is proven to have occurred violates policy

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Panel Considerations

- Develop deliberation guidelines
- Provide an opportunity for each DM to independently assess the evidence and share their viewpoint
  - Be aware of power dynamics within the panel
  - Avoid any outside influence or commentary
  - Select one DM to take notes
- Choose one DM, generally the Chair, to compose initial drafts
  - All DMs should approve of final draft
  - May seek limited input/feedback from TIXC or legal counsel
- May consult TIXC on process-related questions

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Communicating Outcomes

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Communicating a Decision

- DMs communicate their decision to the TIXC
- TIXC will then:
  - Deliver decision to sanctioning body, if process is bifurcated, or arrange for DM to meet with those who have sanctioning authority
  - Deliver decision simultaneously to parties in writing
    - Sharing the decision does not violate FERPA
  - Inform relevant stakeholders
    - Residence Life
    - Campus Security/Police
    - Legal counsel
    - Employee's supervisor

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Recordkeeping and Documentation

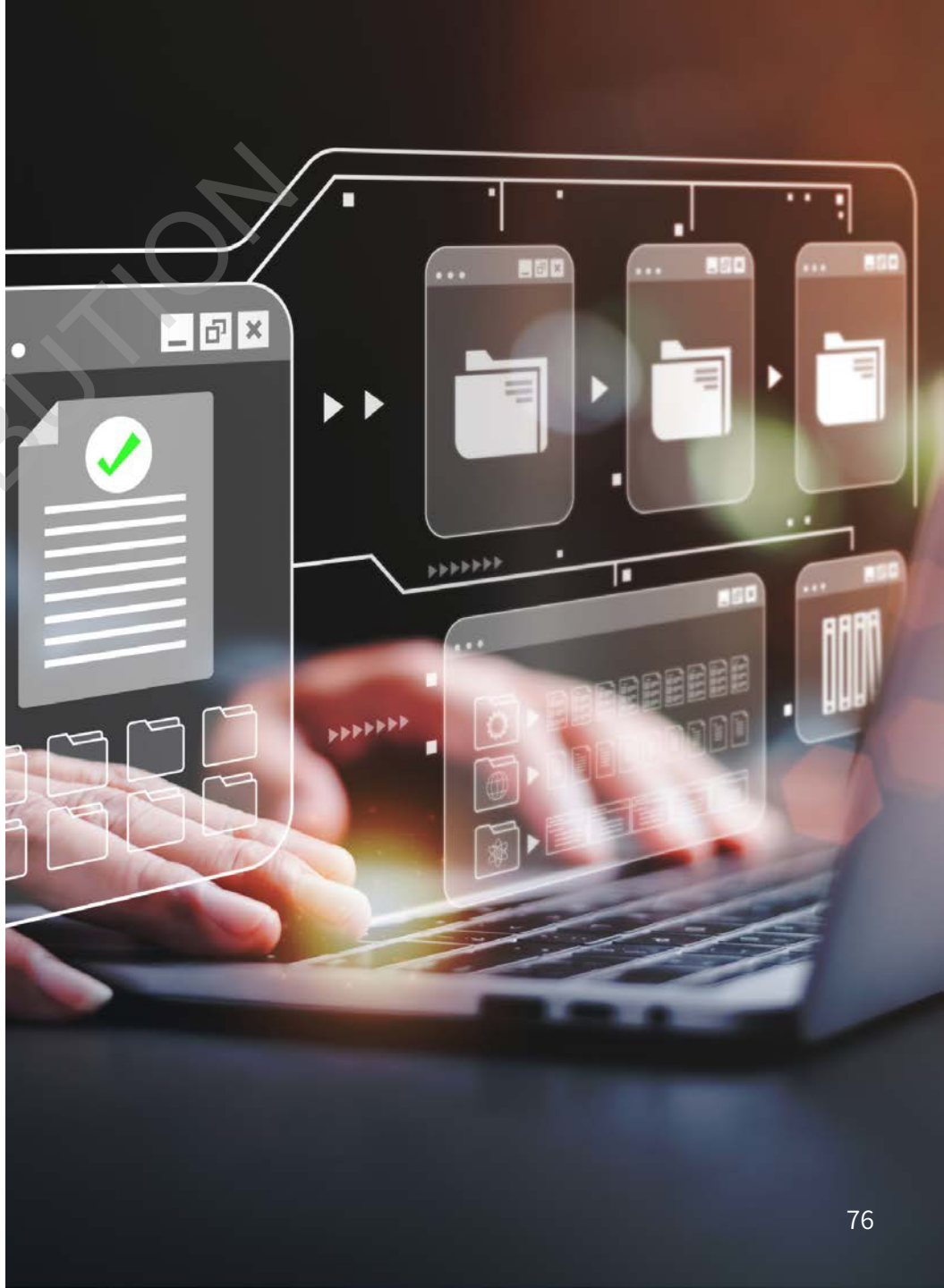
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Recordkeeping

DM may need to compile all decision-making and hearing-related documentation to provide to the TIXC after the hearing

- **Timeline** of decision-making process
- **Interactions** and pre-hearing meetings with parties, other DMs, TIXC, etc.
- **Determination** with any associated sanctions
- **Rationales** for all determinations
- **All work product** from the DM and hearing process
- **Recording/transcription**



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Decision-Maker Notes and Drafts

- A hearing creates opportunities to generate paperwork and paper trails
- Be judicious with notetaking, annotating, draft writing, and communication
- Anticipate that the parties (or others) could see your work product
  - Student FERPA rights
  - Employee personnel record rights
  - Litigation or agency investigations
- TIXC should provide guidance and clear expectations about saving work product, including personal notes

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Questions?

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